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U.S. DISTRICT COURT
DISTRICT OF MASS

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

06 CA 12101 GAO

MAGISTRATE JUDGE JLA

MARIANNE MILNER
Plaintiff,

v.

ALLIED HOME MORTGAGE CAPITAL CORP.
Defendant

C.A. No.

RECEIPT # 76512
AMOUNT $ 350
SUMMONS ISSUED 4
LOCAL RULE 4.1
WAIVER FORM
MCF ISSUED
BY DPTY. CLK. [illegible]
DATE 11/21/06

COMPLAINT – CLASS ACTION

INTRODUCTION

1. Plaintiff Marianne Milner brings this action to secure redress for a course of conduct that included the accessing of a consumer report of the plaintiff and numerous other residents of Massachusetts, Rhode Island and New Hampshire without plaintiff's consent or any lawful reason, in violation of the Fair Credit Reporting Act, 15 U.S.C. §1681 et seq. ("FCRA").

JURISDICTION AND VENUE

2. This Court has jurisdiction under 28 U.S.C. §§1331 and 1337 and 15 U.S.C. §1681p ("FCRA").

3. Venue in this District is proper in that defendant does business in this District.

PARTIES

4. Plaintiff Marianne Milner is an individual who resides in Woburn, Massachusetts.

5. Defendant Allied Home Mortgage Capital Corp. (hereinafter "Allied") is a corporation with headquarters in 6110 Pinemont Dr., Suite 215, Houston, Texas. Upon information and belief, the defendant is a licensed lender in Massachusetts, Rhode Island and New Hampshire.

FACTS

6. During the two years preceding the filing of this action, plaintiff Marianne Milner received the document attached as Exhibits A via the United States mail.

7. Exhibit A states: "This 'prescreened' offer of credit is based on information in your credit report . . . ."

8. On information and belief, the quoted statement is true.

9. On information and belief, defendant engaged in or arranged for the "prescreening" of consumers based on information in consumer reports held by a consumer reporting agency.

10. Based on the results of such "prescreening," defendant sent or caused to be sent mailers in the form represented by Exhibit A to numerous consumers, including the plaintiff.

11. "Prescreening" is usually performed by "data brokers" or "information brokers," who access consumer report information. By causing data brokers to handle credit information, defendant subjects consumers to an increased risk of improper disclosure and identity theft. See M. Frank, "Privacy Laws and Data Broker Services," Congressional Testimony, May 10, 2005, Federal Document Clearing House ("data brokers" that perform pre-

screening services are inviting targets for identity thieves and have been the subject of several recent incidents of such theft).

12. Exhibit A is an example of a printed form document.

13. Exhibit A contains the trademarks and commercial symbols of Allied.

14. On information and belief, defendant Allied approved and authorized the dissemination of material in the form represented by Exhibit A.

15. The response telephone numbers and mail address on Exhibit A are used by defendant Allied.

16. On information and belief, defendant Allied obtained business as a result of the dissemination of mailers in the form represented by Exhibit A.

17. On information and belief, more than 200 mailers in the form represented by Exhibit A were sent to residents of Massachusetts, Rhode Island and New Hampshire.

18. Plaintiff Milner had not authorized defendant to access or use plaintiff's consumer report.

19. Defendant Allied had no reason to believe that plaintiff Milner had authorized defendant or defendant's agents to access plaintiff's consumer report or use information therein.

20. Plaintiff Milner did not initiate any transaction with defendant.

21. The FCRA, 15 U.S.C. §1681a(d), defines "consumer report" as follows:

> **The term "consumer report" means any written, oral, or other communication of any information by a consumer reporting agency bearing on a consumer's credit worthiness, credit standing, credit capacity, character, general reputation, personal characteristics, or mode of living**

which is used or expected to be used or collected in whole or in part for the purpose of serving as a factor in establishing the consumer's eligibility for--

(A) credit or insurance to be used primarily for personal, family, or household purposes; . . .

22. The FCRA, 15 U.S.C. §1681a(f), defines "consumer reporting agency" as:

[A]ny person which, for monetary fees, dues, or on a cooperative nonprofit basis, regularly engages in whole or in part in the practice of assembling or evaluating consumer credit information or other information on consumers for the purpose of furnishing consumer reports to third parties, and which uses any means or facility of interstate commerce for the purpose of preparing or furnishing consumer reports.

23. The FCRA, 15 U.S.C. §1681b, provides it is permissible to obtain or use a consumer report on a consumer only with the written consent of the consumer or for certain "permissible purposes," such as the extension of credit to, or review or collection of an account of, the consumer, employment purposes, the underwriting of insurance, or in connection with a business transaction that is initiated by the consumer, or to make a "firm offer of credit."

24. The requester must certify to the consumer reporting agency that a permissible purpose exists.

25. As noted, one "permissible purpose" is to extend a firm offer of credit or insurance to the consumer, even where this has not been requested by the consumer.

26. The sending of the material in Exhibit A does not constitute a permissible reason for anyone to access plaintiff's consumer report without plaintiff's consent.

27. The sending of Exhibit A does not qualify as a "firm offer of credit" within the meaning of the FCRA, justifying the obtention of a consumer report on a consumer, in that the purported offer (if one exists at all) is a sham, excessively vague and totally lacking in

terms. It has no value beyond a solicitation for business, the sending of which is not a permissible purpose for accessing a consumer report. Cole v. U. S. Capital, Inc., 389 F.3d 719 (7th Cir. 2004).

VIOLATION ALLEGED

28. Defendant Allied obtained or used, or caused to be obtained or used, the consumer report of plaintiff Milner and every other person to whom Exhibit A were sent without their written permission or a "permissible purpose."

29. Defendant Allied willfully violated the FCRA.

30. The FCRA, 15 U.S.C. §1681n, provides:

§1681n. Civil liability for willful noncompliance

(a) In general. Any person who willfully fails to comply with any requirement imposed under this title [15 USC §§1681 et seq.] with respect to any consumer is liable to that consumer in an amount equal to the sum of–

> **(1)(A) any actual damages sustained by the consumer as a result of the failure or damages of not less than $ 100 and not more than $ 1,000; or**
> **(B) in the case of liability of a natural person for obtaining a consumer report under false pretenses or knowingly without a permissible purpose, actual damages sustained by the consumer as a result of the failure or $ 1,000, whichever is greater;**
> **(2) such amount of punitive damages as the court may allow; and**
> **(3) in the case of any successful action to enforce any liability under this section, the costs of the action together with reasonable attorney's fees as determined by the court. . . .**

31. The FCRA, 15 U.S.C. §1681p, provides:

§1681p. Jurisdiction of courts; limitation of actions

An action to enforce any liability created under this title [15 USC §§1681 et seq.] may be brought in any appropriate United States district court without regard to the amount in controversy, or in any other court of competent jurisdiction, within two years from the date on which the liability arises, except that where a defendant has materially and willfully misrepresented any information required under this title [15 USC §§1681 et seq.] to be disclosed to an individual and the information so misrepresented is material to the establishment of the defendant's liability to that individual under this title [15 USC §§1681 et seq.], the action may be brought at any time within two years after discovery by the individual of the misrepresentation.

CLASS ALLEGATIONS

32. This claim is brought on behalf of a class, consisting of (a) all persons with Massachusetts, Rhode Island and New Hampshire addresses (b) to whom defendant Allied sent or caused to be sent material in the form represented by Exhibit A (c) on or after a date two years prior to the filing of this action. Persons who responded to the material and obtained credit as a result of such response are excluded.

33. According to Exhibit A, the consumer report of each such individuals were accessed.

34. The class is so numerous that joinder of all members is impracticable.

35. Exhibit A is a form document.

36. There are questions of law and fact common to the class, which questions predominate over any questions affecting only individual class members. The predominant common question is whether obtaining a consumer report for the purpose of transmission of the material in Exhibit A violates the FCRA.

37. Plaintiff's claims are typical of the claims of the class members. All are based on the same legal and factual issues.

38. Plaintiff Milner will fairly and adequately represent the members of the class. Plaintiff has retained counsel experienced in the prosecution of similar claims.

39. A class action is superior for the fair and efficient prosecution of this litigation. Classwide liability is essential to cause defendant to stop its improper conduct. Many class members may be unaware that they have been victims of illegal conduct.

WHEREFORE, plaintiff requests that the Court enter judgment in plaintiff's favor and in favor of the class for:

a. Appropriate statutory damages;
b. Injunctive relief against further violations;
c. Attorney's fees, litigation expenses and costs of suit;
d. Such other or further relief as is appropriate.

Respectfully submitted;

Christopher M. Lefebvre #629056
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JURY DEMAND

Plaintiff demands trial by jury.

Christopher Lefebvre

Exhibit A

INFO EXPRESS-GRAM

ALLIED HOME
MORTGAGE
CAPITAL CORPORATION

Working for you and your dream home!

Marianne M. Milner
67 Pearl St
Woburn, MA 01801-6495

You have been PRE-APPROVED!

Dear Marianne:

Would you like to take advantage of current interest rates, consolidate other debt, or buy the home of your dreams? Allied Home Mortgage Capital Corporation is here to help **YOU!**

You'll be glad to know that you have been pre-approved for a loan to allow you to refinance your mortgage, buy that new home, or pay off high interest credit cards. Maybe there's a home improvement project that will make your home even more enjoyable. The possibilities are endless! Just give us a call before this offer expires, and get started.

We don't think anyone offers as many different loan programs as we do, and you may also qualify for other loans that could help you make your dreams come true. Saving money sounds good, so call today, and let's see if **we have a loan that's right for you.**

Call today and do what thousands of other people all across the country have already done – ***put us to work for you!*** Don't delay - you must call before **June 15, 2006** to take advantage of this great opportunity.

Don Crummet
Call us today – Toll Free – 866-925-CASH
Reservation # BR2486
273 West Main St., 2nd Floor
Norton, MA 02766

You can choose to stop receiving "prescreened" offers of credit from this and other companies by calling toll-free 888-567-8688. See PRESCREEN & OPT-OUT NOTICE on other side for more information about prescreened offers.

Hours of operation:
Monday-Friday 8:30 AM – 9:00 PM
Saturday 9:00 AM – 1:00 PM

EQUAL HOUSING OPPORTUNITY

NAMB

PRESCREEN & OPT-OUT NOTICE

This "prescreened" offer of credit is based on information obtained from a consumer credit reporting agency. You received this offer because you satisfied certain pre-established criteria for creditworthiness. This offer may not be extended if, after responding to this offer, you do not meet the criteria used in the initial selection process or you do not furnish the required collateral. Prior to final approval we will verify income and employment, review credit, and analyze debt and equity in the property that will be used as collateral. If you do not want to receive prescreened offers of credit from this and other companies, call the consumer reporting agencies toll-free at 888-567-8688, or write: Trans Union Opt-Out, P.O. Box 97328, Jackson, MS 39288-7328; Experian Information Solutions, Inc., P.O. Box 919, Allen, TX 75013-0919; or Equifax Options, P.O. Box 740123, Atlanta, GA 30374-0123

Allied Home Mortgage Capital Corporation holds state licenses in order to Lend or broker mortgage loans. AHMCC does have exemptions in seleet states. Rates may vary and are subject to change without notice, eertain restrietions apply.

Arizona Mortgage Bankers License BK-0018749, Principle Office: 3920 Indiana School Rd., Suite 17, Phoenix, AZ 85018; Licensed by the Department of Corporations under the California Residential Mortgage Lending Act - License Number 4130623; Georgia Residential Mortgage Licensee, 6110 Pinemont, Houston, TX 77092; Illinois Residential Mortgage Licensee, Number 4571 - Illinois Commissioner of Banks and Real Estate 310 South Michigan Avenue, Suite 2130, Chicago, Illinois 60604 - Telephone 312-793-3000; Allied Home Mortgage Capital Corporation is registered with the Kansas State Banking Department - Kansas Licensed Mortgage Company, 6110 Pinemont, Houston, TX 77092; Massachusetts Mortgage Licenses Lender #ML0903 and Massachusetts Licensed Broker #MB1357, AHMCC arranges, but does not make loans; Mississippi Registered Mortgage Company; Allied Home Mortgage Capital Corp. licensed by the Montana Division of Banking and Financial Institutions, 6110 Pinemont Drive, Suite 215, Houston, Texas 77092, License # 000163; Missouri Exemption 6110 Pinemont Drive, Houston, TX 77092; Licensed by the New Hampshire Banking Department; Licensed Mortgage Banker - New Jersey Department of Banking and Insurance; Registered Mortgage Banker - NYS Banking Department, 6110 Pinemont Drive, Houston, Texas 77092; Licensed by the Pennsylvania Department of Banking; Rhode Island Licensed Lender, License Number 98000889 and Rhode Island Licensed Broker, License Number 98000890.